

NOT FOR PUBLICATION

JAN 24 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

LUIS ALFONSO MEDENDEZ-
ALVARADO,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72869

Agency No. A95-444-464

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Luis Alfonso Mendez Alvarado, a native and citizen of Mexico, petitions
for review of the Board of Immigration Appeals' dismissal of his appeal of an

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's denial of his application for cancellation of removal. We have jurisdiction pursuant to 8 U.S.C. § 1252. We deny the petition for review.

Alvarado contends that the IJ erred as a matter of law in concluding that his administrative voluntary departure in 1994 constituted a break in continuous physical presence such that he failed to meet the requisite ten-years of continuous physical presence prior to issuance of the Notice to Appear. This contention is foreclosed by *Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 972 (9th Cir. 2003) (*per curiam*).

Alvarado acknowledges that *Vasquez-Lopez* resolved this issue, however, he urges this panel to revisit that holding. We decline to do so because a three-judge panel lacks authority to overrule Ninth Circuit precedent. *See United States v. Lucas*, 963 F.2d 243, 247 (9th Cir. 1992). Moreover, a petition for rehearing en banc in *Vasquez-Lopez* previously failed to receive a majority of the votes of the nonrecused active judges. *See Vasquez-Lopez*, 343 F.3d 961 (9th Cir. 2003) (order).

PETITION FOR REVIEW DENIED.